

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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:  
JOSE LUIS AURELIO PINZON and ADAN VIDAL  
LOPEZ RAMIREZ,  
:

Plaintiffs,  
:

-v-  
:

168 8TH AVENUE FOOD CORP., D/B/A SQUARE  
DELI, and ADAM SALEH,  
:

Defendants.  
X

20 Civ. 6156 (PAE) (SN)

OPINION & ORDER

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PAUL A. ENGELMAYER, District Judge:

Currently pending is plaintiffs’ motion for a default against defendants 168 8<sup>th</sup> Avenue Food Corporation, d/b/a Square Deli, and Adam Saleh, for violations of the Fair Labor Standards Act (“FLSA”) and the New York State Labor Law (“NYLL”). The Court earlier entered a default as to liability. Before the Court is the July 14, 2021 Report and Recommendation of the Hon. Sarah Netburn, United States Magistrate Judge, recommending that the Court award \$116,229.50, with prejudgment interest to be calculated at the time of judgment. The Court incorporates by reference the summary of the facts provided in the Report. For the following reasons, the Court adopts this recommendation.

**DISCUSSION**

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at \*2 (S.D.N.Y.

Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at \*4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

As no party has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Netburn's thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. Because the Report explicitly states that "failure to object within fourteen (14) days will result in a waiver of objections and will preclude appellate review," Report at 24, the parties' failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

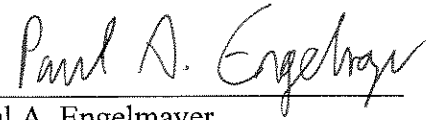
### CONCLUSION

For the foregoing reasons, the Court grants the award of \$116,229.50, plus applicable interest, broken down as:

- (1) \$38,042.50 in wage and hour damages to Ramirez, plus 9% prejudgment simple interest, calculated from July 17, 2019, to the date of judgment;
- (2) \$8,091 in wage and hour damages to Pinzon, plus 9% prejudgment simple interest, calculated from April 10, 2019, to the date of judgment;
- (3) \$38,042.50 for Ramirez and \$8,091 for Pinzon in liquidated damages;
- (4) \$10,000 for Ramirez and \$10,000 for Pinzon in statutory wage notice damages;
- (5) \$3,412.50 in attorney's fees; and
- (6) \$550 in costs.

The Court respectfully directs the Clerk to mail a copy of this decision to plaintiffs at the address on file, and to close this case.

SO ORDERED.

A handwritten signature in black ink, reading "Paul A. Engelmayer". The signature is written in a cursive style with a horizontal line underneath it.

Paul A. Engelmayer  
United States District Judge

Dated: August 31, 2021  
New York, New York